



Citation : CDJ 2018 MHC 3416

Court : High Court of Judicature at Madras

Case No : CrI.R.C. No. 367 of 2018

Judges : THE HONOURABLE MR. JUSTICE M.V. MURALIDARAN

Parties : Umamaheswari Versus Arunkumar & Another

Appearing Advocates : For the Petitioner: B. Ullasavelan, Advocate. For the Respondents: T.G. Ravichandran, Advocate.

Date of Judgment : 05-06-2018

Head Note :

Criminal Procedure Code - Section 397 r/w Section 401 - Section 125 -

Comparative Citation:
2018 (3) MLJ(CrI) 167,

Judgment :

(Prayer: Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., against the order dated 31.08.2017 in M.P.No.37 of 2016 in M.C.No.566 of 2007 on the file of VI Additional Family Court at Chennai.)

1. The instant Criminal Revision Case is filed by the mother as against her two sons for the relief of enhancement of maintenance under Section 127 of Cr.P.C., to direct the respondents to pay a sum of Rs.75,000/- per month towards maintenance to the petitioner. Considering the scope of the petition in M.P.No.37 of 2016 in M.C.No.566 of 2007, by the order dated 31.08.2017 the learned VIth Additional Family Court at Chennai partly allowed the petition filed by the revision petitioner by directed the respondents to pay a sum of Rs.1000/- per month as additional maintenance, apart from Rs.15,000/-and the said amount shall be paid on or before the 5th day of every English calendar month. Feeling aggrieved over the order passed in M.P.No.37/2016 the instant revision is filed by the petitioner to set-aside the order passed therein.

2. This is a case of chequered history. The petitioner is the mother of the respondents herein and in the year 2007, she filed a maintenance petition in M.C.No.566 of 2007 under Section 125 of Cr.P.C. In the said petition the petitioner sought for a direction to direct the respondents to pay a monthly allowance of Rs.15,000/- as maintenance. Further, in the said petition the petitioner listed three items of property and other source of income of the respondents and also adduced reasons as to how she is entitled to claim the maintenance amount as prayed for. However, pending the aforesaid maintenance petition, the revision petitioner preferred another miscellaneous petition in M.P.No.275 of 2009 for interim maintenance and by the order dated 01.04.2010, the petition was allowed and the respondents were directed to pay a sum of Rs.2,000/- to the petitioner as interim maintenance. However, as the

amount a sum of Rs.2,000/- ordered as interim maintenance was in adequate, the petitioner preferred a Civil Revision Petition in C.R.P.(PD)No.2375 of 2010 before this Court and by the order dated 07.07.2014 the amount of interim maintenance was enhanced to a sum of Rs.7,500/-.

3. Subsequently, as the revision petitioner got documentary evidence to prove the income of the respondents is very high, she filed another application in M.P.No.37 of 2016 under Section 127 of Cr.P.C. It is the admitted case of the revision petitioner that both the petitions filed under Sections 125 and 127 of Cr.P.C. were heard together but order was passed only in the application filed under Section 125 of Cr.P.C., and no order was passed in M.P.No.37 of 2016. But without considering these facts the application for enhancement of interim maintenance in M.P.No.37 of 2016 was only partly allowed.

4. It is the specific case of the revision petitioner that at the time of passing final order in M.C.No.566 of 2007 dated 22.06.2017, the learned trial judge transferred the petition in M.P.No.37 of 2016 filed for the enhancement of interim maintenance to the learned VIth Additional Principal Judge, Family Court, Chennai. At this juncture when the order passed in M.C.No.566 of 2007 dated 22.06.2017 is perused, there is no reference about the fate of the M.P.No.37 of 2016. However, the order was passed in the said M.P.No.37 of 2016 by the learned VIth Additional Principal Judge Family Court, Chennai on 03.08.2017. So, it is clear that at the time of passing final order in M.C.No.566 of 2007 no order was passed in M.P.No.37 of 2016.

5. The learned counsel for the revision petitioner would submit that the learned trial Judge ought to have disposed of the interim petition for enhancement of maintenance in M.P.No.37 of 2016. Though final order is passed in the main case simultaneously final order is also to be passed in the pending M.P.No.37 of 2016 on either way as per law. So, the subsequent order passed in M.P.No.37 of 2016 is liable to be set-aside and the monthly maintenance is to be revised by a sum of Rs.75,000/-.

6. Further, it is also contended by the learned counsel for the revision petitioner that the learned Trial Judge has passed the order under the wrong impression that M.P.No.37 of 2016 was filed subsequent to the order passed in M.C.No.566 of 2007 on that score alone the said order is liable to be interfered with by this Hon'ble Court.

7. Per contra, the learned counsel for the respondents would contend that there is no fault on the part of the revision petitioners as they have complied with the orders passed by the learned Trial Court periodically. Even as on date, no maintenance is due as arrear payable to the revision petitioner. Apart from that the amenities including shelter offered by the respondents were intentionally denied by the revision petitioner. Hence, she is not entitled to any additional payment, apart from the amount fixed in the M.P.No.37 of 2016 by the order dated 31.08.2017. The learned counsel also pointed out that once final order is passed in M.C.No.566 of 2007, the revision petitioner ought to have challenged the said final order instead of the interim order passed in M.P.No.37 of 2016. Hence, he prays for the dismissal of the Criminal Revision case.

8. I heard Mr.B.Ullasavelan, learned counsel for the petitioner and Mr.T.G.Ravichandran, learned counsel for the respondents and the materials available on record are perused.

9. The instant Criminal Revision Case is filed as against that order passed in M.P.No.37 of 2016 in M.C.No.566 of 2007, the perusal of the records would show that mother of two sons is forced to file a case for maintenance. Though she filed the maintenance case in the year 2007, only in 2010 she was granted a sum of Rs.2,000/- by the order passed in M.P.No.275 of 2009 on 01.04.2010. Subsequently, the revision petitioner filed C.R.P.(PD)No.2375 of 2010 before this Court and by the order dated 07.07.2014, the interim maintenance was enhanced to a sum of Rs.7,500/-. At the same time the main case that is M.C.No.566 of 2007 was all along kept pending which constrained the revision petitioner to file another petition in M.P.No.37 of 2016 for the enhancement of interim maintenance. No doubt

the petitioner is entitled to file such an application for the enhancement of interim maintenance. At the same time, it is imperative on the part of the learned Trial Court to give finding in the miscellaneous petition also pending if any, while passing final orders in the main case.

10. It is not desirable to keep the miscellaneous petition, if any, pending while final order is passed in the main case. Such circumstances would fetch chaos and the parties concerned would be left into lurch. At the same time the learned Trial Court is entitled to pass any order in accordance with law in the miscellaneous petitions by adducing sufficient cause. In the case on hand there is no explanation or reference in the final order passed in M.C.No.566 of 2007 about the result of the pending petition for enhancement of interim maintenance that is M.P.No.7 of 2016. The learned Trial Judge is expected to try each case with utmost sincerity in the manner known to all. He should have given some reasonable finding in M.P.No.37/2016 when final order is passed in the maintenance case.

So, the Registry is directed to mark the copy of this order to all the Principal District Judges and in turn the Principal District Judges are directed to pass a circular to the effect that order is also to be passed in the miscellaneous petitions when final order is passed in the main case in the manner known to law.

11. Let me come to the facts and circumstances of the present case. As far as the enhancement of interim maintenance is concerned, it should be taken note of the present change of circumstances. It is the admitted fact and I could also see that no amount is due as arrears payable to the revision petitioner by the respondents. Further, the final order passed in M.C.No.566 of 2007 is not been challenged before this Court. However, the learned Trial Judge has partly allowed the amount sought for in the enhancement of the interim maintenance. The revision petitioner has not adduced any separate and important change of circumstances in the facts of the case. All the points raised in the petition in M.P.No.37 of 2016 were also brought to the notice of the learned Trial Judge while he was trying the case in M.C.No.566 of 2007 and the perusal of records would show that they were considered and a sum of Rs.1000/- was ordered as additional maintenance. However, in the interest of justice and also considering the age of the revision petitioner, I am inclined to revise the monthly allowance of maintenance at a sum of Rs.17,000/- from a sum of Rs.16,000/-.

12. Accordingly, this Criminal Revision Case is disposed of with a direction to the respondents to pay a sum of Rs.17,000/- as monthly maintenance to the revision petitioner as per the direction of the learned trial Court, within the time stipulated every month.